



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 2, 1993

Mr. Burton Raiford  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR93-493

Dear Mr. Raiford:

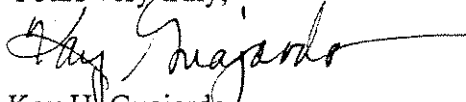
You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20441.

The Texas Department of Human Services has received an open records request for certain attendance records. You contend that the information at issue here may be withheld from the public pursuant to section 3(a)(3) of the Open Records Act. To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 3(a)(3); the requested records may therefore be withheld. *See* Open Records Decision No. 386 (1983) at 2 (pendency of complaint before the Equal Employment Opportunity Commission indicates substantial likelihood of litigation).

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3). We also note that the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Open Government Section

KHG/GCK/jmn

Ref.: ID# 20441

cc: Mr. Hank DeSio  
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1220 Broadway #1905A  
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